

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DWIGHT RUSSELL, *et al.*,
Plaintiffs,

v.

HARRIS COUNTY, TEXAS, *et al.*,
Defendants,

STATE OF TEXAS, *et al.*,
Intervenor-Defendants.

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Case No. 4:19-cv-00226

STATE INTERVENORS' UNOPPOSED MOTION TO WITHDRAW

The State of Texas, Governor of Texas, and Attorney General of Texas (“State Intervenor”) respectfully move to withdraw as intervenors from this case.

I. BACKGROUND

On March 29, 2020, the State Intervenor moved to intervene in this matter pursuant to Federal Rule of Civil Procedure 24. ECF No. 38. At the time the State Intervenor sought to intervene, Plaintiffs sought emergency, substantive relief based on the COVID-19 pandemic that would have resulted in the immediate release of thousands of felony arrestees. Because the County Defendants did not contest any of Plaintiffs’ arguments, the State Intervenor asked to join this lawsuit to defend the bail procedures that formed the basis for Plaintiffs’ confinement. *See* ECF Nos. 38, 38.1.

This Court agreed and allowed the State Intervenor to intervene as a matter of right at a critical time in this case because, among other factors, the interests of

the State Intervenor were not adequately represented by the County Defendants. *See, generally*, ECF No. 46.

Much has changed since the State Intervenor first appeared in this case. On the same day the State Intervenor moved for intervention, the Governor issued Executive Order GA-13 on March 29, 2020, which prohibited the release on personal bond of any individual currently arrested or previously convicted of an offense felony involving physical violence or a threat of physical violence. *See* ECF No. 39. The Court denied Plaintiffs' temporary restraining order motions. ECF No. 122.

Plaintiffs then filed a Second Amended Complaint on June 26, 2020 and added 23 Harris County District Judges (the "Felony Judges") who preside over felony criminal cases as defendants to this lawsuit. As parties to this suit, the Felony Judges are currently defending against Plaintiffs' claims that the county's bail practices and procedures and GA-13 violate their constitutional rights. Given the presence of the Felony Judges in this case and because the interests of the State of Texas are adequately represented at this time, the State Intervenor seek to withdraw their intervention.

II. ARGUMENT & AUTHORITIES

An intervenor's right to withdraw its intervention is inherent in Rule 24, which provides prospective intervenors multiple paths to seek intervention "[o]n timely motion," including circumstances under which a court "must" or "may" permit intervention. Fed. R. Civ. P. 24(a), (b). But regardless of whether the intervention is of right or permissive, a movant's decision to seek an intervention is a discretionary

choice, initiated by the movant and for which the court simply decides whether or not to “permit” the movant’s request. *Id.*; see also, e.g., *Kourtis v. Cameron*, 419 F.3d 989, 998 (9th Cir. 2005) (“Intervention has been conceived as a device that permits a nonparty to become a party *when it wishes....*”), *abrogated on other grounds by Taylor v. Sturgell*, 553 U.S. 880 (2008). However, nothing in Rule 24 requires that a party’s decision to pursue intervention be an irreversible decision that can never be revisited. That is particularly true where developments in the case eliminate the reason for the intervention. When an intervenor has reevaluated its decision to pursue intervention in a particular case, courts have consistently granted the intervenor’s request to withdraw. See, e.g., Order, *Chesapeake Energy Corp. v. Bank of New York Mellon Trust Co.*, No. 1:13-cv-01582, Dkt. No. 60 (S.D.N.Y. Apr. 1, 2013); Order, *Brown v. Detzner*, No. 3:12-cv-00852, Dkt. No. 58 (M.D. Fla. Apr. 29, 2013); Minute Order, *South Carolina v. United States*, No. 1:12-cv-00203 (D.D.C. May 24, 2012). As long as it “does not seriously interfere with the actual hearings,” withdrawal “should be freely granted.” *Dowell v. Bd. of Educ. of Okla. City Pub. Sch.*, 430 F.2d 865, 868 (10th Cir. 1970) (per curiam).

Here, the State Intervenors no longer seek to participate as intervenors in this proceeding at this time. The State Intervenors joined this proceeding in order to assert their interests regarding the extraordinary relief sought by Plaintiffs in their temporary restraining order motions. While intervention was necessary because the County Defendants could not adequately represent the interests of the State Intervenors, the defensive position in this case is now being represented by the Felony

Judges. The Felony Judges are adequately representing the interests of the State Intervenor and, to the extent they remain parties to this lawsuit after their appeal concludes, they are poised to defend the constitutionality of the GA-13.¹ As a result, the current status of the litigation supports the State Intervenor's motion to withdraw.

Beyond the Court's authority to grant the State Intervenor's request, allowing withdrawal at this time would not be disruptive to the proceedings in this case, and would serve judicial economy. It will reduce the number of parties to this proceeding and, accordingly, limit the amount and scope of filings in this case.

Granting this motion would not prejudice any party. The Felony Judges continue to seek dismissal of Plaintiffs' claims in their entirety, and Plaintiffs have not alleged any claims against the State Intervenor. Additionally, Plaintiffs will not suffer any prejudice if the Court were to grant the State Intervenor's request to withdraw from this case. Accordingly, because the State Intervenor's withdrawal would not interfere with the proceedings at all, let alone "seriously interfere" with them, the Court should grant the State Intervenor's request to withdraw from this case. *See Dowell*, 430 F.2d at 868.

¹ If the Felony Judges are successful in their pending appeal and are dismissed from this lawsuit, the State of Texas reserves the right to seek intervention at a later time solely as to the constitutionality of state laws, including GA-13. *See* FED. R. CIV. P. 5(a)(1)(B).

CONCLUSION

The State of Texas, Governor of Texas, and Attorney General of Texas respectfully request that the Court grant their Unopposed Motion to Withdraw and thereby allow them to withdraw from this proceeding.

Respectfully submitted.

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CERTIFICATE OF CONFERENCE

I hereby certify that I contacted counsel for Plaintiffs and counsel for Defendants via email on December 3, 2020, regarding the substance of this Motion. Plaintiffs' counsel and Defendants' counsel indicated that they are unopposed to the relief requested in this Motion.

/s/ Kimberly Gdula

KIMBERLY GDULA

Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent by electronic notification through ECF by the United States District Court, Southern District of Texas, Houston Division, on December 4, 2020, to all parties of record.

/s/ Kimberly Gdula

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